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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Section 309(j)
of the Communications Act,
Competitive Bidding)

PP Docket No. 93-253

To: The Commission

**COMMENTS OF AIRTOUCH PAGING
ON PETITIONS FOR RECONSIDERATION**

AirTouch Paging (formerly PacTel Paging), by its attorneys and pursuant to Section 1.429(f) of the Commission's Rules and the Commission's June 27, 1994, Public Notice, Report No. 2020, hereby submits its Comments on the Petitions for Reconsideration of the Commission's Third Report and Order in PP Docket No. 93-253, Implementation of Section 309(j) of the Communications Act, Competitive Bidding, released May 10, 1994, in which the Commission adopted rules governing the auction of spectrum to provide narrowband Personal Communications Services ("PCS"). The following is respectfully shown.

I. Preliminary Statement

1. AirTouch Paging is a licensed provider of both common carrier (Part 22) and private carrier (Part 90) mobile radio services throughout the United States, and

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provides service to over one million paging units. By industry estimates, AirTouch Paging is the fourth largest paging service provider, and one of the fastest growing paging companies, in the United States. AirTouch Paging has extensive experience in connection with the establishment of complex wide-area messaging networks, and has established itself as a *bona fide* provider of mobile communications services to substantial segments of the public. As such, AirTouch Paging has been an active participant in the Commission's proceedings regarding spectrum allocations and rules for PCS, with particular emphasis on the narrowband PCS allocation.^{1/}

2. AirTouch Paging intends to expand upon its considerable experience by offering a range of new services in the 930-931 MHz band that has been allocated for narrowband PCS. AirTouch Paging's FCC Form 175 application, certifying that it intends to participate in the auction and bid on all frequency blocks, has been accepted by the Commission.^{2/} Although AirTouch Paging generally supports the rules adopted in the Third Report and Order, several issues raised in the petitions for reconsideration merit further comment.

^{1/} AirTouch Paging (as PacTel Paging) filed comments in ET Docket No. 92-100 on November 9, 1993 and in PP Docket No. 93-253 on November 10, 1993.

^{2/} See Public Notice Announcing the Status of Applications Received for the 10 Nationwide Narrowband Personal Communication Service Licenses, released July 5, 1994.

II. The Commission Must Not Delay the Auctioning of Narrowband PCS Spectrum

3. Some 67 companies and individuals filed FCC Form 175 applications to participate in the auctions for nationwide narrowband PCS licenses which will be held beginning July 25, 1994.^{3/} These applications were filed by large established wireless service providers and by new entities, including small businesses and businesses owned by women and minorities, that wish to become licensed providers of new and innovative services to the public. Clearly, there is widespread interest in offering narrowband PCS services.

4. Only six parties^{4/} filed petitions for reconsideration of the narrowband PCS auction rules, reflecting a general acceptance of those rules. Notably, only one of the petitioning parties seeks to delay the auctioning, licensing, and implementation of narrowband PCS.^{5/} In its petition, Phase One raises several procedural

^{3/} See Public Notice Announcing the Status of Applications Received for the 10 Nationwide Narrowband Personal Communication Service Licenses, released July 5, 1994.

^{4/} Association of Independent Designated Entities ("AIDE"), Paging Network, Inc. ("PageNet"), Phase One Communications, Inc. ("Phase One"), Rural Cellular Association ("RCA"), Tri-State Radio Company ("Tri-State"), and U.S. Intelco Networks, Inc ("USIN").

^{5/} AirTouch Paging is aware that on June 15, 1994, Echo Group, L.P. filed a Petition to Stay or to Condition Grant of Certain Nationwide Narrowband PCS Licenses. Even that filing, however, offers an alternative to postponement of the scheduled auctions.

arguments against the procedures established for narrowband PCS auctions and requests that auctions be postponed until these procedures have been reconsidered and revised.^{6/}

AirTouch Paging opposes Phase One's petition. None of the assertions justify delaying the scheduled auctions for the 10 nationwide narrowband PCS licenses.

5. Phase One asserts that the Commission has not established that there is mutual exclusivity among the applications for the licenses to be auctioned. However, the July 5, 1994, Public Notice establishes that there are mutually exclusive applications for each of the nationwide narrowband PCS licenses for which bidding will be conducted. In any event, Phase One is incorrect in asserting that Section 309(j) of the Communications Act "prohibit[s] [the Commission] from establishing specific auction dates until it has determined that a particular application is in fact mutually exclusive."^{7/} The Communications Act only prohibits the auctioning of a license for which no mutually exclusive applications have been accepted for filing. See 47 U.S.C. § 309(j)(i). Thus, the filing of applications is a statutory prerequisite to the Commission's determination of whether an auction will be held.^{8/}

^{6/} See Phase One Petition for Reconsideration at 2, 4, 5.

^{7/} Phase One Petition for Reconsideration at 2.

^{8/} Moreover, the Commission's auction rules specifically address how such situations will be handled. See PP
(continued...)

6. Phase One's remaining arguments against holding the scheduled auctions are equally unavailing. For example, Phase One claims that there is an insufficient amount of time between the filing of applications and the holding of the auctions.^{2/} However, Phase One provides no support for this statement; there is no evidence that it has been affirmatively disadvantaged by any of the procedural measures it complains of. Significantly, all applicants are subject to the same procedures.

7. In sum, AirTouch Paging supports the schedule established by the Commission for the auctioning of nationwide narrowband PCS licenses. That schedule will allow AirTouch Paging and others to promptly begin the process of providing service to the public.

III. The Commission Should Not Use Sealed Bidding Procedures For Response Channel Spectrum

8. Narrowband PCS licenses will be granted on a nationwide, regional, MTA, and BTA basis. Within each MTA and each BTA, four 12.5 kHz unpaired response channel licenses will be auctioned.^{10/} In the Third Report and

^{1/}(...continued)

Docket No. 93-253, Second Report and Order, 75 RR 2d 230 (1994), para. 165.

^{2/} Phase One Petition for Reconsideration at 3.

^{10/} See Amendment of the Commission's Rules to Establish New Narrowband Nationwide Personal Communications Services, Memorandum Opinion and Order, 9 FCC Rcd. 1309 (1994), Appendix 1, Section 99.130.

Order, the Commission determined that it would use separate simultaneous multiple round auctions for nationwide, regional, MTA, and BTA licenses. However, the Commission established a different method for the auctioning of licenses for the response channels. Specifically, a single round sealed bid auction will be held for these licenses, which will be the final group of narrowband PCS licenses to be auctioned.^{11/} AirTouch Paging supports the petitions for reconsideration requesting that the Commission abandon the sealed bid method for these channels.

9. According to PageNet and Tri-State, the Commission's stated reasons for adopting a single round sealed bid method do not support that decision.^{12/} AirTouch Paging agrees. The auction procedures established for response channel licenses do not serve the public interest and should be amended.

10. In the Third Report and Order, the Commission acknowledged that sealed bid methods are less efficient than simultaneous multiple round bid methods, but stated that the loss of efficiency is "mitigated by the fact that bidders on these licenses will have access to information about license values from" the earlier narrowband PCS auctions. However, as the petitioners note, those values will have little

^{11/} Third Report and Order at para. 29.

^{12/} See PageNet Petition for Reconsideration at 2-4; Tri-State Petition for Reconsideration at 4-11.

bearing on response channel values. Sealed bid auctions will provide no additional competitive information on the value of these channels. Furthermore, the Commission's conclusion that there is limited value interdependency among these licenses simply is not supported by the record.

11. In order to provide the information necessary to maximize the values of the response channels to bidders, the Commission should hold multiple round simultaneous auctions for all response channels for which more applications are filed than there are available channels. In order to expedite the auction, AirTouch recommends that the Commission continue to use the one hour bidding interval tentatively adopted for other narrowband PCS auctions, but set the starting bid of \$1,000, with minimum bid increments at \$1,000. AirTouch Paging anticipates that the auction should last no more than eight rounds (one day). These changes from the auction rules for nationwide licenses would ensure that the bidding on the licenses would end within one day.

12. AirTouch Paging also suggests that bids for the response channels be in pool form. For example, four licenses would be available, but no specific channels would be designated; the highest four bidders for the pool would receive a license. Following the close of the auction, the four tentative licensees should be permitted to reach agreement among themselves as to the specific licenses to be

held by each. If they fail to reach agreement within sixty days of the close of the auction, the Commission should make the determination, ensuring that each of the four licensees receives the same channel over the broadest area possible.

13. Alternatively, if the Commission does not adopt the pooled auction approach, it should implement simultaneous multiple round auctions for specific response channels designated prior to the auctions. Under this scenario, the activity rules should be altered to ensure that bidders participate early and submit frequent bids. The activity rules adopted in the Third Report and Order will not be effective in light of the restriction that only paging operators licensed as of June 24, 1993 who operated at least one base station within the BTA or MTA for which channels are sought are eligible to bid on the response channels. Bidding should close when no additional bid has been received for all channels.

Conclusion

WHEREFORE, the foregoing premises duly considered, AirTouch Paging requests that on reconsideration of the Third Report and Order in PP Docket No. 93-253, the Commission amend the rules adopted therein consistent with these Comments.

Respectfully submitted,

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July 11, 1994

CERTIFICATE OF SERVICE

I, Tana Christine Maples, hereby certify that on this 11th day of July, 1994, I caused a true and correct copy of the foregoing Comments of AirTouch Paging on Petitions for Reconsideration to be delivered by first-class United States mail, postage prepaid, to the following:

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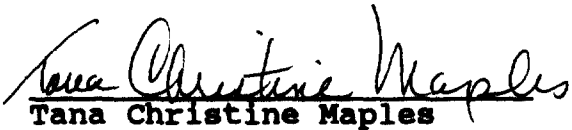
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